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Attorneys for Defendant
REUNION.COM, INC.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

VIOLETTA HOANG, LIVIA HSIAO, and
MICHAEL BLACKSBURG, individually and
on behalf of a class of similarly situated
persons,

Plaintiffs,

v.

REUNION.COM, INC., a California
corporation,

Defendant.

No. 3:08-cv-3518 MMC

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO STRIKE AND
FOR INVOLUNTARY DISMISSAL
PURSUANT TO FED.R.CIV.P. 41(B)**

Date: September 25, 2009
Time: 9:00 AM
Judge: Hon. Maxine Chesney
Courtroom 7 (19th Floor)

1 Before the Court is Defendant's Motion to Strike and for Involuntary Dismissal
2 Pursuant to Fed.R.Civ.P. 41(b) (Docket No. 86). Having considered the parties'
3 respective memoranda of law, the Court hereby GRANTS Defendant's Motions for
4 reasons set forth in Defendant's memoranda.

5 Plaintiffs' "Notice Of Withdrawal Of Second Amended Complaint And Of
6 Plaintiffs' Decision To Stand On The First Amended Complaint Without Further
7 Amendment" (Docket No. 78) is hereby stricken as procedurally improper.

8 This case is further DISMISSED involuntary and with prejudice pursuant to
9 Fed.R.Civ.P. 41(b) for Plaintiffs' continued failure to plead a cause of action that is
10 not preempted by the CAN SPAM Act (15 U.S.C. § 7701(b)(1)), and continued
11 refusal to correct the defects in Plaintiffs' complaints that the Court has heretofore
12 identified. The Court finds that involuntary dismissal, rather than dismissal under
13 Fed.R.Civ.P. 12(b), is particularly appropriate given Plaintiffs' repeated refusals to
14 follow this Court's instructions, their misrepresentation to the Court regarding the
15 intended scope of the Second Amended Complaint, and their refusal even now to
16 substantively withdraw the Second Amended Complaint or their opposition to
17 Defendant's Motion to Dismiss, both of which fail for the same reasons as their prior
18 pleadings.

19 The Court further finds that FINAL JUDGMENT shall be entered *nunc pro*
20 *tunc*, to May 29, 2009, for Plaintiffs' failure to comply with the Court's instructions of
21 May 14, 2009 (Docket No. 73). Based upon representations made in their
22 Supplemental Brief in Support of their Motion for Reconsideration (Docket No. 68),
23 Plaintiffs were given leave to file a Second Amended Complaint no later than May 29,
24 2009. The Second Amended Complaint, however, as Plaintiffs' counsel concede, did
25 not contain the allegations Plaintiffs' represented would be present. Whether
26 Plaintiffs' intended any misrepresentation at the time is immaterial. *Montgomery v.*
27 *City of Ardmore*, 365 F.3d 926, 943 (10th Cir. 2004). The Court is within its
28 discretion to issue an appropriate sanction for this failure to comply with Court orders

1 and to adhere to their own promises, and finds that entry of judgment effective the
2 date that Plaintiffs were given to submit a proper Second Amended Complaint is
3 appropriate under these exceptional circumstances. *See Ruby v. Sec'y of United States*
4 *Navy*, 365 F.2d 385, 388 (9th Cir. 1966).

5 This is a final and appealable order.

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8 Dated: _____

9 Maxine M. Chesney
10 United States District Judge
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1 **DATED:** September 14, 2009

Respectfully submitted,

2 s/ Ronald Jason Palmieri
3 One of the Attorneys for Defendant

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